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No. 556

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

DORA ROBERTS,

Petitioner,

v.

JOSEPH D. NUNAN, JR.,

Commissioner of Internal Revenue,

Respondent.

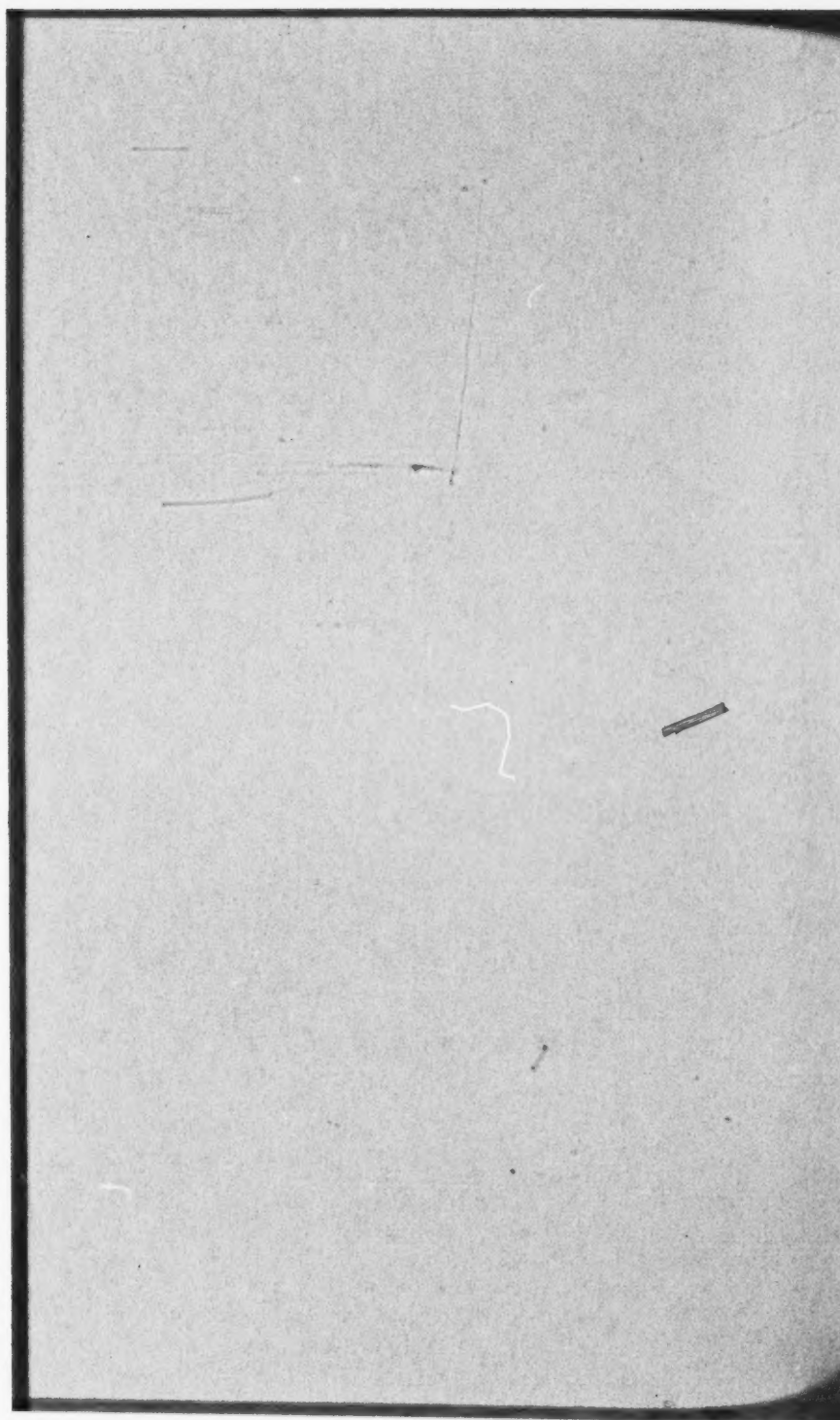
**Petition For a Writ of Certiorari to The United
States Circuit Court of Appeals For the Fifth
Circuit and Brief In Support Thereof.**

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**Petition For Writ of Certiorari to The United States
Circuit Court of Appeals for the Fifth Circuit**

Dora Roberts prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above-entitled cause on July 7, 1944, affirming a decision of The Tax Court of the United States.

Question Presented

Whether irrevocable gifts of money made by petitioner in the calendar years 1938, 1939, 1940 and 1941 to two minors and one adult (her grandchildren) are required to be classified as gifts of "future interests," and, therefore, excepted from the exclusions from taxable gifts provided by *Section 1003 of the Internal Revenue Code*, and Treasury Regulations promulgated thereunder, because the gift funds

were forthwith invested in contracts, the obligations of which were to be discharged by payment in the future, and because for a period of ten years after the date of certain of the gifts (a period that ended before the minor donees attained their majorities), and for a longer time after the date of other of the gifts, a limited amount of control over the res of the gifts was lodged in the widowed mothers of the donees, who, in the case of the minor donees, was their natural guardian.

While tax liabilities for the years 1939 to 1941, only, are involved, the status of the 1938 gifts is material because of the cumulative provisions of the gift tax statute.

Statutes and Regulations Involved

The statute applicable to the three (3) taxable years involved in this proceeding is *Section 1003 of the Internal Revenue Code*. It reads as follows:

“Sec. 1003. NET GIFTS.

(a) General Definition.—The term ‘net gifts’ means the total amount of gifts made during the calendar year, less the deductions provided in Section 1004.

(b) Exclusions from gifts.

* * * * *

(2) Gifts after 1938.—In the case of gifts (other than gifts in trust or of future interests in property) made to any person by the donor during the calendar year 1939 and subsequent calendar years, the first \$4,000 of such gifts to such person shall not, for the purpose of subsection (a), be included in the total amount of gifts made during such year.”

For years prior to 1939, the amount excluded from taxable gifts (Sec. 1003 (b) (1) of the Internal Revenue Code) was \$5,000.00.

The applicable Treasury Regulations are *Regulations 79* (1936 Ed.) *Article 11*, which reads as follows:

“Art. 11.—Future interests in property.—No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. ‘Future interests’ is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. *The term has no reference to such contractual rights as exist in a bond, note (though bearing no interest until maturity), or in a policy of life insurance, the obligations of which are to be discharged by payment in the future.* But a future interest or interests in such contractual obligations may be created by the limitations contained in a trust or other instrument of transfer employed in effecting a gift. * * * * * (Emphasis supplied).

Statement

In 1938, Dora Roberts, petitioner herein, caused applications to be made to two Life Insurance Companies for the issuance by them of “Guaranteed Endowment Annuity” contracts in favor of three of her grandchildren,—two of them minors aged nine and twelve, respectively, and one an adult (R. 20 and 53). These applications were accepted; Mrs. Roberts

gave her check, or checks, to the Agent for each of the issuing insurance companies for the first annual premiums and the contracts were thereupon issued and delivered in 1938 to the grandchildren (R. 21 and 30). While Mrs. Roberts signed most of the applications for the policies, she did not obligate herself in any way for the payment of future premiums (R. 25).

The basic provisions of each policy called for annual premiums of a designated amount for a specified period of years until a named maturity date, at which time premium payments were to cease, and payments by the company to the annuitant of a specified sum of money each month for his lifetime were to commence (R. 25).

The provisions of each contract gave full value and benefit for each premium payment. The policies were not to forfeit if the payments did not continue, but reduced annuity payments would result. The due date of the first annuity installment (otherwise due some years in the future) could, by an election duly made, be advanced so that annuity payments could be demanded shortly after the issuance of the policy, but reduced annuity payments would likewise follow an election of this sort (R. 22 and 55).

In each of the policies the right to exercise the various options provided for in the contract was lodged for a period of time in the mother of the annuitant named in that particular policy. However, these options could be exercised by her only for the benefit of the named annuitant and for no other purpose. In some of the policies the powers thus confided to

the mothers of the annuitants terminated shortly before the minor annuitants attained their majority. In other of the policies these powers terminated at the death of the mother (R. 22-23).

In the years 1939, 1940 and 1941, Mrs. Roberts voluntarily paid the premiums becoming due on the policies for those years. These payments she included in gift tax returns, and claimed as to each donee the exclusions provided by *Internal Revenue Code, Section 1003 (b) (2)*. The exclusions were disallowed by the Commissioner on the grounds that the gifts were "of future interests in property," not allowable under that section. (R. 25, 26 and 54).

The aforesaid determination of the Commissioner of Internal Revenue was upheld by The Tax Court of the United States (R. 18) and the decision of The Tax Court of the United States was in turn affirmed by the Circuit Court of Appeals for the Fifth Circuit (R. 53).

Specification of Errors To Be Urged

The Circuit Court of Appeals erred:

1. In holding and deciding that the gifts of money with which to acquire the annuity contracts made by petitioner in 1938 were gifts of "future interests in property," as defined in Section 1003 (b) of the Internal Revenue Code.
2. In holding and deciding that the gifts of money made in the years 1939, 1940 and 1941, with which to pay premiums on the said annuity contracts were

gifts of "future interests in property," as defined in Section 1003 (b) of the Internal Revenue Code.

3. In failing to hold and decide that the said gifts were gifts of a present interest in property.

4. In failing to hold and decide that, with respect to the said gifts, petitioner is entitled to exclusions under Section 1003 (b) of the Internal Revenue Code totaling \$15,000.00 for 1938, and \$12,000.00, \$12,000.00, and \$12,000.00, for 1939, 1940 and 1941, respectively.

5. In holding and deciding that the net taxable gifts reported by donor for the years 1939, 1940 and 1941 should be increased by the respective amounts of \$24,500.00, \$34,800.00 and \$46,400.00.

6. In adjudging and decreeing that petitioner is due deficiencies in gift tax for the calendar years 1939, 1940 and 1941 in the respective amounts of \$1,423.34, \$2,620.06 and \$1,682.30.

7. In failing to adjudge and decree that petitioner is due no deficiency in gift tax for either of the said years 1939, 1940 and 1941 in any amount.

Reasons For Granting the Writ

The Writ should be granted because the holding of the Court below is in the teeth of the applicable statutes and regulations; because the holding of the Court below is in direct conflict with the principles laid down in its own decision in *Commissioner v. Kempner*, 126 Fed. (2d) 853; because the holding of the Court below is in direct conflict with the principles applied by the United States Circuit Court of Appeals for the Third Circuit in *William D. Diss-*

ton v. Commissioner of Internal Revenue, Fed. (2d), decided July 12, 1944; and because the Court below decided an important question of Federal law which has not been, but which should be decided by this Court.

The Court below treated the gifts here involved, not as money gifts, but as successive gifts of fractional interests in annuity policies. Because, under the terms and conditions of these policies, (in the absence of an election to the contrary) the first payment to the annuitant was not immediately due and payable, the Court below, in the teeth of *Treasury Regulations 79, Article 11*, and contrary to the principles laid down by it in *Commissioner v. Kempner*, 126 Fed. (2d) 853, held the gifts to be gifts of future interests.

As to the minor annuitants, the holding of the Court below is in direct conflict, in principle, with the decision of the Circuit Court of Appeals for the Third Circuit in *William D. Disston v. Commissioner of Internal Revenue*, Fed. (2d), decided July 12, 1944, which is to the effect that an immediate and irrevocable gift to a minor, not dependent for its consummation or continuation upon the happening of uncertain future events, constitutes the gift of a present interest, although control and management of the res of the gift and the income therefrom is, during the minority of the minor, vested in trustees who have sole discretion as to its use during the period of minority.

This Court, we are sure, judicially knows that many gifts to minors have been made in recent years.

Control and management of all such gifts, of necessity, must be lodged, during the period of minority, when the minor is incapable of acting for himself, with one other than the minor donee. Because of the importance of the question, whether the lodging of such limited control in another for a period of time requires such gifts to be classified as gifts of "future interests," and because of the conflict between the principles applied in the decision of the Court below in the instant proceeding, and in its decision in *Fondren v. Commissioner*, 141 Fed. (2d) 419, (Waller, Justice, dissenting), petition for certiorari filed May 19, 1944, now pending, with those applied by the Third Circuit Court of Appeals in *Disston v. Commissioner*, supra, it is believed that the writ should issue to the end that there may be an authoritative decision of this Court upon the question involved.

WHEREFORE, it is respectfully submitted that the petition should be granted.

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